

REMARKS

Claims 1-9, 11-20, 22-24, and 26-28 are presently pending in the case. Claims 1, 15, and 22 have been amended. The amendments are supported by the specification and claims as originally filed. For example, see page 7 lines 24-31.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Claim rejections under 35 USC §102

The Examiner rejected claims 1-9, 15-20, and 22-24 under 35 USC §102(b) as being anticipated by U.S. Patent 4,069,819 to Valentini et al (hereinafter Valentini et al). The rejection is traversed.

Valentini et al does not anticipate claims 1-9, 15-20, and 22-24. For a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention. Non-disclosure of a single element, feature or limitation of the claim negates anticipation. Independent claim 1, for example, is to an aerosolization apparatus comprising, inter alia, a chamber having a sidewall with a cross-section that is non-circular wherein a receptacle contacts the non-circular cross-section of the sidewall when the receptacle moves within the chamber, whereby when a user inhales, the receptacle is disturbed by contact with the non-circular cross-section of the sidewall. This positively recited feature is not disclosed by Valentini et al. Instead, in the Valentini et al device, the receptacle C contacts a circular cross-section of the chamber (see Figure 6). Since Valentini et al does not disclose each and every feature set forth in claim 1, it does not anticipate the claim. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereof under 25 USC §102.

The Examiner points to Figure 5 as showing a non-circular cross-section.

However, the non-circular cross-section referred to is not a sidewall that is contacted by the receptacle when the receptacle moves within the chamber so that the receptacle is disturbed by contact with the non-circular cross-section, as required by Applicant's claim 1. Accordingly, the disclosure of Valentini et al that is relied on by the Examiner does not meet the claim limitations and does not anticipate claim 1.

Valentini et al also does not anticipate independent claim 15. Claim 15 is to an aerosolization apparatus comprising, inter alia, a chamber having a sidewall with a cross-section that is non-circular wherein a receptacle contacts the non-circular cross-section of the sidewall when the receptacle moves within the chamber, whereby when a user inhales, the receptacle is disturbed by contact with the non-circular cross-section of the sidewall. This feature is not disclosed by Valentini et al, and Valentini et al does not anticipate the claim.

In addition, Valentini et al does not anticipate independent claim 22. Claim 22 is to an aerosolization apparatus comprising, inter alia, a chamber having a sidewall with a cross-section that is non-circular wherein a receptacle contacts the non-circular cross-section of the sidewall when the receptacle moves within the chamber, whereby when a user inhales, the receptacle is disturbed by contact with the non-circular cross-section of the sidewall. Valentini et al does not disclose this feature. In addition, claim 22 requires that the non-circular cross-section is along a plane parallel to the longitudinal axis of the chamber. This feature, too, is missing in the disclosure of Valentini et al. Accordingly, Valentini et al does not anticipate claim 22.

Claims 1-9, 11-14, 16-20, 23, 24, and 26-28 are also not anticipated by Valentini et al. Claims 1-9, 11-14, 16-20, 23, 24, and 26-28 depend from one of claims 1, 15 or 22 and are not anticipated by Valentini et al for at least the same reasons as the claim from which they depend.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 11-14 and 26-28 under 35 USC §103(a) as being unpatentable over Valentini et al. The rejection is traversed.

Valentini et al does not render claims 11-14 and 26-28 unpatentable. Claim 11, for example, is to the apparatus of claim 1 wherein the non-circular cross-section comprises one or more projections that extend into the chamber. The Examiner does not provide any teaching, suggestion, or motivation for making the proposed modification to Valentini et al. Furthermore, the Examiner does not posit that the proposed modification is one well within the grasp of a person having ordinary skill in the art at the time of the invention. Accordingly, the Examiner has failed to establish a prima facie case under 35 U.S.C. §103(a). Furthermore there is no showing the there was a known problem for which there was an obvious solution encompassed by the claims. Withdrawal of the rejections under 35 U.S.C. §103(a) is requested.

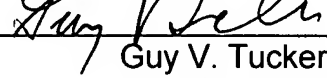
Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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